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HB 2860 RELATING TO ENVIRONMENTAL IMPACT STATEMENTS

Statement for House Committee on
Planning, Energy and Environmental Protection
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HB 2860 would amend HRS 343-6 (2) by stipulating that the purchase of improved real property by the state or county may be covered by a negative declaration while subsequent use of this property may require an Environmental Impact Statement.

Our statement on this bill does not represent an institutional position of the University of Hawaii.

We understand that the City and County of Honolulu Parks Department has had some questions in complying with the present requirements of HRS 343 with regard to the purchase of improved real property. If an assessment is prepared on the acquisition of improved property, as is required by HRS 343-5 (1) for the expenditure of state or county funds, then it is unclear if an additional EA can be required at such time as definite plans on the use of the site are developed. Certainly if the site is not yet owned by the county or state and the plans for the use of the site are not fully developed, a comprehensive EA (or EIS) can not be prepared. For example, the state or county can not be expected to conduct extensive archaeological investigations on a proposed property, including possible subsurface testing, if they don't have ownership of the land. Similarly, it can be argued that it would be a waste of effort to prepare detailed plans and an acceptable EIS for the use of a property where ultimate ownership is still undecided and such ownership presently lies in the private sector.

Unfortunately, the amendment proposed would not resolve the problem and in fact is seriously flawed in the following respects:

1. The permission to issue a negative declaration for the expenditure of state or county funds to acquire improved real property is already provided by HRS 343-6(8) and the EIS rules 11-200-9(4).
2. Similarly, the provision that use of the property may require a statement [Environmental Impact Statement] is also covered by HRS 343-6 (4) and (8).
3. Use of the term "Negative Declaration" is inappropriate in this context. A "negative declaration" is the decision reached after environmental assessment has shown that no significant impacts are likely to occur with a proposed project. The exercise of undertaking an environmental assessment would be moot if the "negative declaration" decision has already been made.
4. The use of the qualifying term "may" in lines 12 and 14 on page 1 suggests a limit on the application of this proposed amendment. In fact, one "may" issue a negative declaration and one "may" require an EIS under existing statutes. However, the expenditure of state or county funds without any assessment, as "may" be provided by this amendment would create a very significant change in the application of HRS 343 and one whose ramifications should be examined with far more care than can be given in the time allotted to review this bill. At the present time, it is unclear if agencies other than the City and County of Honolulu find the existing requirements burdensome, and if so in what way. It may be possible to address the problem through rule-making rather than statutory changes. For example, the City and County of Honolulu may be able to add a new class and action to the existing classes of actions that are exempt from HRS 343 under HRS 343-6(6).

The Environmental Center is presently negotiating a contract, not yet funded, with the Office of Environmental Quality Control, in response to a request from last year's legislature to review the efficacy of HRS 343. We will certainly be examining this question of applicability of HRS 343 to the purchase of improved and unimproved lands as part of our review.